FILE COPY

No. 621

Office-Supreme Court, U.S.
FILED
FEB 29 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

JANIS ZALCMANIS, GERTRUDE JANSONS, LORENA JANSONS, ASJA VIVIANA JANSONS, n/k/a Asja Liders and the Public Administrator of the County of New York, State of New York, Administrator of the Estate of KARLIS JANSONS, Deceased, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

JOHN J. PAJAK,
Attorney,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	11
Appendix	12

CITATIONS

Cases:

Bertelson & Peterson Engineering Co. v. *United States*, 60 F. 2d 745	7
Castell v. *United States*, 14 F. Supp. 654	9
Escher v. *Woods*, 281 U. S. 379	9
Guessefeldt v. *McGrath*, 342 U. S. 308	10
Henkels v. *Sutherland*, 271 U. S. 298	9
Hind v. *United States*, 41 F. 2d 892	7
Kry v. *Miller*, 2 F. 2d 313, appeal dismissed, 273 U. S. 778	9
United States v. *Burnet*, 65 F. 2d 195	7
United States v. *Magnolia Co.*, 276 U. S. 160	7
United States v. *North American Co.*, 253 U. S. 330	7
United States v. *O'Keefe*, 11 Wall. 178	5
United States v. *Sullivan*, 213 F.2d 765	6
United States ex. rel. Escher v. *Burnet*, decided March 31, 1931 (Sup. Ct. D. C.)	9, 10
Vowinckel v. *First Federal Trust Co.*, 15 F. 2d 872	9

Statutes:

Internal Revenue Code of 1939, Sec. 3771 (26 U.S.C. 1952 ed., Sec. 3771)	2, 4, 5, 12

Statutes—Continued Page

Trading with the Enemy Act, c. 106, 40 Stat. 411:
Sec. 9 (50 U.S.C. Appendix 1952 ed., Sec. 9) 9
Sec. 9(a) (50 U.S.C. Appendix 1952 ed., Sec. 9) 10, 11
Sec. 24(e) (50 U.S.C. Appendix 1952 ed., Sec. 24) 10
Sec. 32 (50 U.S.C. Appendix 1952 ed., Sec. 32) 6, 9, 10, 11
Sec. 36 (50 U.S.C. Appendix 1952 ed., Sec. 36) 2, 12
Sec. 36(c) (50 U.S.C. Appendix 1952 ed., Sec. 36) 2, 4, 5, 6, 7, 8, 14
28 U.S.C., Sec. 2502 4

Miscellaneous:

H. Rep. No. 1269, 79th Cong., 2d Sess., pp. 1-2 (U.S.C. Cong. Serv. (1946) 1101) 10
H. Rep. No. 2398, 79th Cong., 2d Sess., p. 17 7
Treasury Regulations on Trading with the Enemy Act, T.D. 5612, 1948-1 Cum. Bull. 144, 150, Sec. 452a.27 8

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 621

JANIS ZALCMANIS, GERTRUDE JANSONS, LORENA JANSONS, ASJA VIVIANA JANSONS, n k/a Asja Liders and the Public Administrator of the County of New York, State of New York, Administrator of the Estate of KARLIS JANSONS, Deceased, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (Pet. B-1—B-11) is reported at 173 F. Supp. 355. A prior opinion in this case is reported at 149 F. Supp. 169.

JURISDICTION

The judgment of the Court of Claims was entered on June 3, 1959 (Pet. B-1), and a timely petition for rehearing was denied on October 7, 1959 (Pet.

B-12). The petition for certiorari was filed on December 30, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, Section 36(c) of the Trading with the Enemy Act bars the payment of interest upon a tax refund for the period during which the statute of limitations on assessment, collection, refund or credit of federal taxes is suspended with respect to vested property.

STATUTES INVOLVED

Section 36 of the Trading with the Enemy Act and Section 3771 of the Internal Revenue Code are set forth in the Appendix, *infra*, pp. 12-15.

STATEMENT

The pertinent facts may be summarized as follows. Petitioners are Janis Zalcmanis and others, sole heirs, distributees and next of kin of Karlis Jansons (Pet. B-6, B-10), all of whom are citizens of the Republic of Latvia now residing in the United States, and the Public Administrator of New York County as administrator of the estate of Karlis Jansons, a deceased Latvian citizen (Pet. B-6). Zalcmanis and Jansons each owned an interest in two ships which were sunk in 1942. (Pet. B-7.)

On August 6, 1943, the Alien Property Custodian issued Vesting Order No. 1941, vesting proceeds from the operation of the ships and insurance collected as

a result of their sinking. (Pet. B-7—B-8.) These sums amounted to $837,225.51. (Pet. B-8.)

On February 7, 1946, the Commissioner of Internal Revenue determined deficiencies in income, excess profits, and declared value excess profits taxes for the years 1940, 1941 and 1942, attributable to the operation of the two ships during those years and the receipt of the insurance proceeds after their sinking. These deficiencies were assessed and, pursuant to the consent of the Alien Property Custodian and an order of a District Court, payment was made out of the vested moneys in the amount of $597,687.49, on March 15, 1946. (Pet. B-8.) On July 13, 1948, timely claims for refund of these taxes were filed on behalf of the Custodian. (Reference to the Custodian is to the Alien Property Custodian or to the Attorney General as successor to the Alien Property Custodian.) (Pet. B-9.)

On May 20, 1952, the Custodian paid the sum of $89,110.62 to petitioner Zalemanis and a similar sum to the Public Administrator. Each of these sums represented approximately one-third of the vested funds remaining after the March 15, 1946, tax payment. (Pet. B-9.)

In 1955, it was administratively determined that the taxes, penalties, and interest paid on March 15, 1946, had been erroneously collected. Accordingly, on March 29, 1955, the Treasury Department refunded to the Custodian the amount previously collected without statutory interest. (Pet. B-9—B-10.)

On June 20, 1955, Return Order No. 2420 was issued, and pursuant thereto the Custodian paid the

sum of $199,070.16 to Zalcmanis and a similar sum to the Public Administrator, a total of $398,140.32. Each of the individual sums represented approximately one-third of the March 29, 1955, tax refund. (Pet. B-5, B-10.)

Petitioners sought a recovery of six percent statutory interest on overpayments of tax under the Internal Revenue Code of 1939, Section 3771, on the sum of $398,140.32 (the sum returned to them by the Custodian on June 20, 1955) from March 15, 1946 (the date the tax was paid), to June 20, 1955. The Court of Claims dismissed the petition on the ground that the petitioners are not entitled to interest as claimed because Section 36(c) of the Trading with the Enemy Act provides that no interest shall be payable until the period of suspension of the statute of limitations shall cease six months after the divesting. (Pet. B-5—B-6, B-11.)

ARGUMENT

The decision of the Court of Claims (Pet. B-5—B-6) that petitioners are not entitled to the interest claimed because Section 36(c) of the Trading with the Enemy Act (Appendix, *infra*, p. 14) bars the payment of interest until six months after the divesting is correct. There is no conflict of decisions, and the question does not warrant review by this Court.

---

[1] The jurisdictional statute, 28 U.S.C., Section 2502, requires, as a condition precedent to suit by an alien against the United States in the Court of Claims, that an American citizen have the right to sue the alien's government in its

Petitioners seek to recover statutory interest under Section 3771 of the Internal Revenue Code of 1939 (Appendix, *infra*, p. 12), on the sum of $398,140.32, from March 15, 1946, to June 20, 1955. This claim is based upon the contention that that sum represented a tax refund made to them on June 20, 1955. (Pet. 5, Amended Petition filed March 13, 1957, pars. 24-26.) The Court of Claims held (Pet. B-5—B-6) that the petitioners are not entitled to interest as claimed because of the bar of Section 36(c) of the Trading with the Enemy Act, the pertinent portion of which reads as follows:

> Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

Under the first clause of this portion of Section 36(c), all statutes of limitations on assessment, collection, refund, and credit of federal taxes were suspended with respect to the vested bank deposits. The period of suspension was from the date of the vesting order, August 6, 1943, to six months after June 20,

---

courts. See *United States* v. *O'Keefe*, 11 Wall. 178, 184. The Court of Claims recognized that no courts are maintained by the alien petitioners' government and that all claims must be administratively determined, but, nevertheless, held that the jurisdictional statute was satisfied. (Pet. B-2—B-3.)

1955, the date on which the aliquot portion of the tax refund was divested and returned to the petitioners under Section 32 of the Trading with the Enemy Act. The second clause of this portion of Section 36(c) bars the payment of interest on a refund for the period of this suspension. In accordance with the statute, no interest was paid to the Custodian when the tax refund was made to him on March 29, 1955. As the Court of Claims held, since petitioners seek interest on the tax refund for a period encompassed within the period of suspension, their claim is prohibited by Section 36(c). (Pet. B-5.)

The decision below is in accord with *United States* v. *Sullivan*, 213 F. 2d 765 (C.A. 1) the one reported case involving the application of Section 36(c). There it was held that a claim for refund, filed by the executor of the taxpayers' estate after the expiration of the three-year statute of limitations of Section 910 of the Internal Revenue Code of 1939, was nevertheless timely by reason of Section 36(c), the Alien Property Custodian having vested the claims of certain enemy aliens as legatees. The First Circuit went on to deny the taxpayer statutory interest on the refund for the period from payment date to a date six months after the termination of the vesting.

Petitioners contend (Pet. 13-18) that, as here applied, Section 36(c) is unconstitutional because it bars the payment of interest on a federal tax refund, thereby depriving friendly aliens of property without due process of law and without payment of just

compensation. It has long been settled that upon a claim against the Government interest is only allowable as provided by statute or by contract. *United States* v. *North American Co.*, 253 U. S. 330, 336. This principle applies in tax refund suits. *United States* v. *Magnolia Co.*, 276 U. S. 160, 163; *Bertelsen & Petersen Engineering Co.* v. *United States*, 60 F. 2d 745, 748 (C.A. 1); *Hind* v. *United States*, 41 F. 2d 892, 895 (C. Cls.). "The allowance of interest by the sovereign is a matter of grace, depending upon its consent, which it can withdraw * * * at any time". *Hind* v. *United States*, *supra*, p. 895. In enacting Section 36(c), Congress was withdrawing the sovereign's consent to the payment of interest during the suspension period on tax refunds, resulting from taxes paid with respect to property vested under the Trading with the Enemy Act. Congress can, of course, provide, by special legislation, such an exception to general law. See *United States* v. *Burnet*, 65 F. 2d 195 (C.A.D.C.).

Petitioners assert that the wording of Section 36 (c) shows it was not enacted to bar recovery of interest to friendly aliens. (Pet. 13.) But Section 36(c) unequivocally states that the statute of limitations shall be suspended with respect to "any vested property * * * while vested" and for six months thereafter. It goes on to provide that "no interest shall" be paid upon "any" refund with respect to "any" period during which the statute of limitations is so suspended. The unqualified scope of the statute is also described in the House committee report (H.

Rep. No. 2398, 79th Cong., 2d Sess., p. 17) as follows:

> The statutes of limitation on assessment, collection, refund, and credit of taxes are suspended during the period of vesting and for 6 months thereafter, but no interest is payable on any refund with respect to any such period of suspension.

Thus, no interest is payable upon any such refund with respect to the period of suspension, without regard to the status of the vestee as an enemy or a non-enemy, a citizen or an alien.[2]

Furthermore, the fact that the tax refund was made, not to petitioners, but to the Custodian[3] is not without significance. In complete accordance with the express provisions of Section 36(e); no interest was paid upon that refund. Petitioners erroneously assume that the tax refund was made to them through the Custodian. (Pet. 5.) However, as the Court of Claims observed, the tax refund was made to the Custodian; subsequently the Custodian made an administrative *return* to the petitioners of a specific portion of vested property, which vested prop-

---

[2] It is thus clear, aside from petitioners' enemy status under the Trading with the Enemy Act, that there is no inconsistency of treatment under the statute so as to violate any treaty between the United States and the Republic of Latvia.

[3] Section 452a.27(c) of Treasury Regulations on Trading with the Enemy Act, T.D. 5612, 1948-1 Cum. Bull. 144, 150, provides that "All refund of taxes paid by the Attorney General shall be made directly to that official." Accordingly, the refund was made to the Custodian (Attorney General).

erty was equal in amount to the tax refunded. (Pet. B-5.)

There is no statutory authorization in the Trading with the Enemy Act for interest upon funds vested and subsequently returned by the Custodian under either Section 9 or 32. As a result, no interest is payable even on funds mistakenly seized from an American citizen. *Henkels* v. *Sutherland*, 271 U. S. 298; *Kny* v. *Miller*, 2 F. 2d 313 (C.A. D.C.), appeal dismissed, 273 U. S. 778; *Vowinckel* v. *First Federal Trust Co.*, 15 F. 2d 872 (N.D. Cal.). Petitioners properly make no contention for the payment of interest upon the vested property, as such, either in whole or as to the portion represented by the tax refund, for the period during which it was vested and held by the Custodian until returned under Section 32. They are not entitled to secure interest upon returned property merely because a federal tax was paid by the Custodian and then refunded to the Custodian, without interest, prior to return to them pursuant to Section 32.

The contention (Pet. 6-12) that the decision of the Court of Claims below is in conflict with its earlier decision in *Castell* v. *United States*, 14 F. Supp. 654 (C. Cls.), and with *United States ex rel. Escher* v. *Burnet* (Sup. Ct. D.C.), decided March 31, 1931 (Pet. C-33, reported more fully in summary form in 1931 C.C.H. par. 9456) is without merit.[4] In *Castell*,

---

[4] *Escher* v. *Woods*, 281 U. S. 379, is without relevance to the particular issue in question. This Court there held the Custodian is not entitled to a deduction for administration expenses not shown to have been incurred in respect of the

the Court of Claims merely held that the restrictions on interest added by Section 18 of the Settlement of War Claims Act of 1928, c. 167, 45 Stat. 254, to Section 24(e) of the Trading with the Enemy Act were not applicable to property of United States citizens which had been mistakenly seized and was returnable under Section 9 of the Trading with the Enemy Act. In *United States ex rel. Escher* v. *Burnet*, *supra*, the Supreme Court of the District of Columbia likewise held that Section 24(e) does not apply to property improperly seized from aliens determined to be non-enemies. These latter cases involve Section 24(e), a section of the Trading with the Enemy Act other than the one here involved, and the parties there concerned were adjudicated non-enemies in Section 9(a) suits. Aside from any other considerations, petitioners here were never adjudicated non-enemies in a Section 9(a) proceeding and these cases are not relevant to the determination of the instant issue.

The return made to petitioners under Section 32 of the Trading with the Enemy Act does not establish that they were friendly aliens and that the vesting of their property was erroneous. The purpose of Section 32 was to authorize the return of vested property to certain technical enemies who could not recover their former property by a suit under Section 9(a). *Guessefeldt* v. *McGrath*, 342 U. S. 308, 314-315; H. Rep. No. 1269, 79th Cong., 2d Sess., pp. 1-2

---

property mistakenly seized and ultimately returned under Section 9 of the Trading with the Enemy Act.

(U.S.C. Cong. Serv. (1946) 1101). A Section 32 return to technical enemies is entirely different from a Section 9(a) return to non-enemies. Petitioners erroneously insist that there has been a determination that they were not enemies and that the vesting of their property was wrongful. (Pet. 7, 21.) The only determination was that a return of their property was in the interest of the United States and authorized by Section 32. (Ex. Q.) Whether or not the vesting was mistaken and whether or not petitioners could have brought a Section 9(a) proceeding (Pet. 20-21) is of no consequence for, as recognized by the court below, no such determination has been made in a Section 9 (a) proceeding (Pet. B-6), and no such proceeding was instituted by petitioners.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

JOHN J. PAJAK,
Attorney.

FEBRUARY 1960.

APPENDIX

Internal Revenue Code of 1939:

SEC. 3771. INTEREST ON OVERPAYMENTS.

(a) *Rate.*—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

(b) *Period:*—Such interest shall be allowed and paid as follows:

* * * * *

(2) *Refunds.*—In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

* * * * *

(26 U.S.C. 1952 ed., Sec. 3771.)

Trading with the Enemy Act, c. 106, 40 Stat. 411:

SEC. 36 [as added by Sec. 1, Act of August 8, 1946, c. 878, 60 Stat. 925]. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Fel-

eral, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9 (a) or 32 hereof,

the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from

any act, omission, neglect, failure, or delay on the part of the Custodian.

(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

(50 U.S.C. Appendix 1952 ed., Sec. 36.)

☆ U. S. GOVERNMENT PRINTING OFFICE 1960 841393 1109

FILE COPY

No. 621

In the Supreme Court of the United States

OCTOBER TERM, 1959

JANIS ZALCMANIS, GERTRUDE JANSONS, LORENA JANSONS, ASJA VIVIANA JANSONS, n/k/a Asja Liders and the Public Administrator of the County of New York, State of New York, Administrator of the Estate of KARLIS JANSONS, Deceased, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR PETITIONER IN REPLY

ROBERT H. LAW, JR.
Counsel for Petitioners Janis Zalcmanis, Gertrude Jansons, Lorena Jansons and Asja Viviana Jansons n/k/a Asja Liders
450 North Broadway
White Plains, N. Y.

JOSEPH T. ARENSON
Counsel for Petitioner Public Administrator of the County of New York, State of New York
51 Chambers Street
New York, N. Y.

ROBERT H. LAW, III
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 621

JANIS ZALCMANIS, GERTRUDE JANSONS, LORENA JANSONS, ASJA VIVIANA JANSONS, n/k/a Asja Liders and the Public Administrator of the County of New York, State of New York, Administrator of the Estate of KARLIS JANSONS, Deceased, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

---

BRIEF FOR PETITIONER IN REPLY

The decision below is not in accord with *United States* v. *Sullivan* (213 F. 2nd 765) as claimed by the United States. True, *United States* v. *Sullivan* is the only reported case involving Section 36 (c). However, the Court in *United States* v. *Sullivan* did not have